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CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a
501(c)(3), nonprofit, public benefit
14 Corporation,

15 Plaintiff,

16 v.

17 AMENT MARINE SERVICE and
DOES 1-10, Inclusive,

18 Defendants.

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**

(Environmental - Clean Water Act - 33 U.S.C.
§ 1251, *et seq.*)

20 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH ("RIVER WATCH"), by and
21 through its attorneys, and for its Complaint against Defendants, AMENT MARINE SERVICE
22 and DOES 1-10, Inclusive, ("AMENT MARINE") states as follows:

23 **I. JURISDICTION AND VENUE**

24 1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal
25 Water Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA") 33 U.S.C.
26 § 1251 *et seq.*, CWA §505, including 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. §
27 1342, to prevent AMENT from repeated and ongoing violations of the CWA. These violations

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1 are detailed in the Notice of Violations and Intent to File Suit dated May 30, 2013, made part
2 of the pleadings of this case and attached hereto as EXHIBIT A (hereafter, "CWA NOTICE").

3 2. RIVER WATCH alleges AMENT MARINE illegally discharges non-storm water
4 pollutants from its facility in Isleton, California to navigable waters in violation of terms of the
5 California General Industrial Storm Water Permit for Industrial Storm Water Discharges,
6 NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality
7 Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ) issued pursuant to
8 CWA § 402(p), 33 U.S.C. § 1342(p) ("General Permit"). AMENT MARINE's Isleton facility
9 is bordered by the Sacramento River.

10 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
11 the imposition of civil penalties, and other relief for AMENT MARINE's violations as set forth
12 in this Complaint.

13 **II. PARTIES TO THE ACTION**

14 4. Plaintiff CALIFORNIA RIVER WATCH is an Internal Revenue Code § 501(c)(3)
15 nonprofit, public benefit corporation duly organized under the laws of the State of California,
16 located at 290 South Main Street, # 817, Sebastopol, California. The specific purpose of
17 RIVER WATCH is to protect, enhance and help restore surface and ground waters of California
18 limited rivers, creeks, streams, wetlands, vernal pools aquifers an associated environs, biota,
19 flora and fauna, as well as to educate the public concerning environmental issues associated
20 with these environs.

21 5. Members of RIVER WATCH reside in northern California where the facility under
22 AMENT MARINE's operation and control which is the subject of Complaint are located. Said
23 have interests in the waters and watersheds which are or may be adversely affected by AMENT
24 MARINE's discharges and violations as alleged herein. Said members use the effected waters
25 and watershed areas for domestic water, recreation, sports, fishing, swimming, hiking,
26 photography, nature walks and the like. Furthermore, the relief sought will redress the injury
27 in fact, likelihood of future injury and interference with the interests of said members.

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1 6. RIVER WATCH is informed and believes, and on such information and belief alleges,
 2 that Defendant AMENT MARINE is a private business, registered in the State of California as
 3 a corporation, registered with the Secretary of State to do business in the State of California
 4 under the name AMENT MARINE SERVICE, and is the owner and operator of the marine
 5 repair and maintenance facility located at 16040 Harbor Drive in the City of Isleton, Sacramento
 6 County, California ("the Site").

7 7. RIVER WATCH is informed and believes and on such information and belief alleges
 8 that Defendants DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations
 9 and entities, who are, or were, responsible for, or in some way contributed to, the violations
 10 which are the subject of this Complaint or are, or were, responsible for the maintenance,
 11 supervision, management, operations, or insurance coverage of AMENT MARINE's Isleton
 12 facility and operations on the Site as identified in the CWA NOTICE and this Complaint. The
 13 names, identities, capacities, and functions of defendants DOES 1 - 10, Inclusive are presently
 14 unknown to RIVER WATCH. RIVER WATCH shall seek leave of court to amend this
 15 Complaint to insert the true names of said DOES defendants when the same have been
 16 ascertained.

17 **III. GENERAL ALLEGATIONS**

18 8. AMENT MARINE, as stated on its website, provides a broad range of vessel repair and
 19 maintenance activities including, but not limited to, "pressure wash," "bottom paint," "replace
 20 zinc," "outdrive sandblast and paint," and "hull painting"
 21 (<http://amentmarine.com/services.html>; August 27, 2013.) These industrial activities are
 22 covered under Standard Industrial Classification ("SIC") 3732 ("Ship Building and Repairing").

23 9. RIVER WATCH alleges AMENT MARINE has a history of failing to prevent pollutants
 24 generated by its outdoor operations from entering storm water runoff from the AMENT
 25 MARINE facility in violation of the CWA and the General Permit. The outdoor work at the Site
 26 takes place on both permeable soils and impermeable pavement that slopes toward the waters
 27 of the Sacramento River. Because the property on which the Site is located is subject to both
 28 rain events and periodic flooding, and because the Site is not properly bermed or otherwise

1 constructed with proper containment, a range of pollutants including petroleum hydrocarbons,
2 sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, heavy metals (including copper
3 and zinc), soaps, sediment, biodegradable matter, sanitary waste, bacteria, and organics
4 discharge to the Sacramento River.

5 10. RIVER WATCH alleges that AMENT MARINE, having submitted a Notice of Intent
6 only after receipt of RIVER WATCH's CWA NOTICE, has failed and is failing and to comply
7 fully with the terms and conditions of California's General Permit, specifically: failing to
8 prepare and implement a Storm Water Pollution Prevention Plan ("SWPPP"), failing to develop
9 and implement a Monitoring and Reporting Program, and failing to implement Best Available
10 Technology Economically Achievable ("BAT"), Best Conventional Pollutant Control
11 Technology ("BCT"), and Best Management Practices ("BMPs") to control the discharge of
12 pollutants in storm water at the Site. The specific provisions of the General Permit which
13 RIVER WATCH alleges AMENT MARINE to be in violation of are as follows:

14 i. Failure to comply with Discharge Prohibition Order Section A(1) of the General
15 Permit, which prohibits the direct or indirect discharge of materials other than storm water
16 ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the
17 waters of the United States.

18 ii. Failure to comply with Discharge Prohibition Order Section A(2) of the General
19 Permit, which prohibits storm water discharges and authorized non-storm water discharges that
20 cause or threaten to cause pollution, contamination, or nuisance.

21 iii. Failure to comply with Receiving Water Limitation Order Section C(1) of the
22 General Permit, which prohibits storm water discharges to any surface or ground water that
23 adversely impact human health or the environment.

24 iv. Failure to comply with Receiving Water Limitation Order Section C(2) of the
25 General Permit, which prohibits storm water discharges that cause or contribute to an
26 exceedance of any applicable water quality standards contained in a Statewide Water Quality
27 Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

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1 v. Failure to develop and implement a SWPPP, as mandated in Permit Section A,
2 which complies with the standards of BAT and BCT, and specifically includes the following:

- 3 • Identification and evaluation of the sources of pollutants associated with
4 industrial activities at the AMENT MARINE facility that may affect the quality
5 of storm and non-storm water discharges from the facility, and identification and
6 implementation of site-specific BMPs to reduce or prevent pollutants associated
7 with industrial activities from the AMENT MARINE facility in storm water and
8 authorized non-storm water discharges (Permit Section A(2)). BMPs must
9 implement BAT and BCT (Order Section B(3));
- 10 • A description of individuals at the AMENT MARINE facility and their
11 responsibilities for developing and implementing the SWPPP (Permit Section
12 A(3)); a site map showing the AMENT MARINE facility boundaries, storm
13 water drainage areas with flow pattern and nearby water bodies, the location of
14 the storm water collection, conveyance and discharge system, structural control
15 measures, impervious areas, areas of actual and potential pollutant contact, and
16 areas of industrial activity (Permit Section A(4)) a list of significant materials
17 handled and stored at the Site (Permit Section A(5)); and, a description of
18 potential pollutant sources including industrial processes, material handling and
19 storage areas, dust and particulate generating activities, and a description of
20 significant spills and leaks, a list of all non-storm water discharges and their
21 sources, and a description of locations where soil erosion may occur at the Site
22 (Permit Section A(6)); and,
- 23 • An assessment of potential pollutant sources at the Site and a description of the
24 BMPs to be implemented at the Site that will reduce or prevent pollutants in
25 storm water discharges and authorized non-storm water discharges, including
26 structural BMPs where non-structural BMPs are not effective (Permit Section
27 A(7), (8)).

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1 **IV. JURISDICTIONAL ALLEGATIONS**

2 11. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to
3 public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent
4 part:

5 *Public participation in the development, revision, and enforcement of any*
6 *regulation, standard, effluent limitation, plan or program established by the*
7 *Administrator or any State under this chapter shall be provided for,*
8 *encouraged, and assisted by the Administrator and the States.*

9 12. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C.
10 § 1365(a)(1), which states in part,

11 "any citizen may commence a civil action on his own behalf against any person
12 . . . who is alleged to be in violation of (A) an effluent standard or limitation.
13 . . . or (B) an order issued by the Administrator or a State with respect to such
14 a standard or limitation." For purposes of CWA § 505, "the term 'citizen' means
15 a person or persons having an interest which is or may be adversely affected."

16 13. All illegal discharges and activities complained of in this Complaint and in the CWA
17 NOTICE occur in the Sacramento River, a water of the United States.

18 14. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
19 from, own property near, and/or recreate on, in or near, and/or otherwise use, enjoy and benefit
20 from the waterways and associated natural resources into which AMENT MARINE allegedly
21 discharges pollutants, or by which its operations adversely affect those members' interests, in
22 violation of the protections embedded in the NPDES Permitting program and the General
23 Permit, CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), CWA
24 § 402, and 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental
25 interests of RIVER WATCH and its members may be, have been, are being, and will continue
26 to be adversely affected by AMENT MARINE's unlawful violations as alleged herein. RIVER
27 WATCH contends there exists an injury in fact to its members, causation of that injury by

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1 AMENT MARINE's complained of conduct, and a likelihood that the requested relief will
2 redress that injury.

3 15. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), RIVER WATCH gave
4 notice of the violations alleged in this Complaint more than sixty days prior to commencement
5 of this action, to: (a) AMENT MARINE, (b) the United States EPA, Federal and Regional, and
6 (c) the State of California Water Resources Control Board.

7 16. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has
8 been served on the United States Attorney General and the Administrator of the Federal EPA.

9 17. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the
10 location of facility and the Site where illegal discharges occurred which are the source of the
11 violations complained of in this action, are located within this District.

12 **V. STATUTORY AND REGULATORY BACKGROUND**

13 18. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point
14 source" into the navigable waters of the United States, unless such discharge is in compliance
15 with applicable effluent limitations as set by the EPA and the applicable State agency. These
16 limits are to be incorporated into a NPDES permit for that point source specifically. Additional
17 sets of regulations are set forth in the Basin Plan, California Toxics Plan, the Code of Federal
18 Regulation and other regulations promulgated by the EPA and the State Water Resources
19 Control Board.

20 19. CWA § 301(a) prohibits discharges of pollutants or activities not authorized by, or in
21 violation of an effluent standard or limitation or an order issued by the EPA or a State with
22 respect to such a standard or limitation including a NPDES permit issued pursuant to CWA §
23 402, 33 U.S.C. § 1342. The pollutants from the AMENT MARINE facility are discharged from
24 point sources under the CWA.

25 20. The affected waterways detailed in this Complaint and in the CWA NOTICE are
26 navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. §
27 1362(7).

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1 21. The Administrator of the EPA has authorized the Regional Water Quality Control Board
2 ("RWQCB") to issue NPDES permits, subject to specified conditions and requirements,
3 pursuant to CWA § 402, 33 U.S.C. § 1342.

4 22. CWA § 402(p), 33 U.S.C. § 1342; 40 C.F.R. § 122.26, prohibits industrial storm water
5 discharges without a permit. For storm water discharges allowed under CWA §402(p),
6 California's General Permit requires all facilities that discharge storm water associated with
7 industrial activity to develop and implement a SWPPP. PLAINTIFF alleges AMENT MARINE
8 has not fully developed and/or adequately implemented a SWPPP for its operations, as
9 evidenced by the fact that AMENT MARINE has failed and is failing to prevent pollutants
10 generated at the Site from entering storm water runoff from the Site.

11 **VI. VIOLATIONS**

12 23. The enumerated violations are detailed in the CWA NOTICE and below, designating the
13 section of the CWA violated by the described activity.

14 24. The location(s) of the discharges are the discharge points as described in the CWA
15 NOTICE.

16 **VII. FIRST CLAIM FOR RELIEF**

17 **Violation of CWA §§ 301(a) and 402(p), 33 U.S.C. §§ 1311(a) and 1342(p) –**
18 **Violation of an effluent standard or limitation under the CWA and/or an order**
19 **issued by the State with respect to such standard or limitation.**

20 RIVER WATCH re-alleges and incorporates by reference the allegations of Paragraphs
21 1 through 24 as though fully set forth herein including all allegations in the CWA NOTICE.
22 RIVER WATCH is informed and believes, and on such information and belief alleges, as
23 follows:

24 25. AMENT MARINE has violated and continues to violate the CWA as evidenced by its
25 violations of the General Permit as set forth in Paragraph 10 of this Complaint and the CWA
26 NOTICE.

27 26. As described in the CWA NOTICE and herein pursuant to CWA §§ 301(a) and 402(p),
28 33 U.S.C. §§ 1311(a) and 1342(p), and 40 C.F.R. § 122.26, RIVER WATCH alleges AMENT

1 MARINE to be in violation of an effluent standard or limitation under the CWA and/or an order
2 issued by the State with respect to such standard to limitation.

3 27. By law and by the terms of the General Permit, violations of California's General Permit
4 are violations of the CWA. (40 C.F.R. § 122.41(a)).

5 28. AMENT MARINE's violations are ongoing, and will continue after the filing of this
6 Complaint. RIVER WATCH alleges herein all violations which may have occurred or will
7 occur prior to trial, but for which data may not have been available or submitted or apparent
8 from the face of the reports or data submitted by AMENT MARINE to the SWRCB, the
9 RWQCB, or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will
10 amend this Complaint if necessary to address AMENT MARINE's State and Federal violations
11 of California's General Permit which may occur after the filing of this Complaint. Each of
12 AMENT MARINE's violations in excess of State and Federal standards has been and is a
13 separate violation of the CWA.

14 29. RIVER WATCH alleges that without the imposition of appropriate civil penalties and
15 the issuance of appropriate equitable relief, AMENT MARINE will continue to violate the
16 General Permit as well as State and Federal standards with respect to the enumerated discharges
17 and releases alleged herein and described in the CWA NOTICE. Further, that the relief
18 requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent
19 future injury, and protect the interests of its members that are or may be adversely affected by
20 AMENT MARINE's violations of the General Permit.

21 30. RIVER WATCH alleges that continuing violations of the CWA by AMENT MARINE
22 at its facility will irreparably harm RIVER WATCH and its members, for which harm RIVER
23 WATCH and its members have no plain, speedy or adequate remedy at law.

24 **VIII. RELIEF REQUESTED**

25 WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

26 31. Declare AMENT MARINE to have violated and to be in violation of the CWA;

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1 32. Issue an injunction ordering AMENT MARINE to immediately operate its facility and
2 the Site in compliance with the CWA and applicable effluent and receiving water limitations
3 in the General Permit, as well as State and Federal standards;

4 33. Order AMENT MARINE to pay civil penalties per violation/per day for its violations
5 of the CWA as alleged in this Complaint;

6 34 Order AMENT MARINE to pay RIVER WATCH's reasonable attorneys' fees and costs
7 (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California
8 law; and,

9 35. Grant such other and further relief as may be just and proper.

10
11 DATED: August 29, 2013



DAVID J. WEINSOFF
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

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Via Certified Mailing - Return Receipt

May 30, 2013

Ament Marine Service
Attn: Owners and Operators
16040 Harbor Drive
Isleton, CA 95641

Ament Marine Service
Attn: Owners and Operators
14567 Walnut Grove-Thornton Road
Walnut Grove, CA 95690

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

Dear Owners, Operators and/or Facility Managers:

NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. §1251 *et seq.*, that River Watch believes are occurring at the two separate Ament Marine Service facilities located at 16040 Harbor Drive in Isleton and 14567 Walnut Grove-Thornton Road in Walnut Grove. Notice is being sent to you as the as the responsible owners, operators or managers of these facilities. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit and unlawful discharge of pollutants from the Ament Marine Service facility in Isleton into the Sacramento River, and the Ament Marine Service facility in Walnut Grove into Snodgrass Slough.

CWA §505(b) requires that 60 days prior to the initiation of a civil action under CWA §505(a), 33 U.S.C. §1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the two Ament Marine Service facilities. Consequently, Ament Marine Service (the "Discharger") is placed on formal notice by River Watch, that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), §402(p), and §505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the Central Valley Regional Water Quality Control Board (5S) Water Quality Control Plan ("Basin Plan").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

Based on information thus far received, River Watch believes pollutants are discharged from the marine vessel repair and maintenance activities at both the Isleton and Walnut Grove sites including, but not limited to, petroleum hydrocarbons, sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, heavy metals (including copper and zinc), soaps, sediment, biodegradable organic matter, sanitary waste, bacteria, and organics. River Watch contends the Discharger has no individual facility NPDES permit for these discharges, and has failed and is failing to apply for coverage and comply with the General Industrial Storm Water Permit, NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"). These discharges are in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to a water of the United States, in this instance the Sacramento River and Snodgrass Slough, pursuant to CWA §301(a), 33 U.S.C. §1311(a) and 33 U.S.C. §1365(f).

Without obtaining coverage under, and complying with the terms of, the General Permit, the Discharger has failed to prepare and implement a Storm Water Pollution Prevention Plan ("SWPPP.") failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to control the discharge of pollutants in storm water at the two Ament Marine Service facilities. These violations will continue until the Discharger submits a Notice of Intent to obtain coverage under the General Permit, implements a SWPPP and Monitoring and Reporting Program, and demonstrates following sampling and testing after storm events, that its implementation of Best Management Practices ("BMPs") is effectively controlling storm water and non-storm water discharges from the two Ament Marine Service sites.

2. *The activity alleged to constitute a violation.*

Operations at both Ament Marine Service sites include a broad range of vessel repair and maintenance activities advertised on the Ament Marine Service website including, but not limited to, "pressure wash," "bottom paint," "replace zinc," "outdrive sandblast and paint," and "hull painting" (<http://www.amentmarine.com/services.html>). The work, covered under Standard Industrial Code ("SIC") 3732 (Ship and Boat Building and Repairing) is conducted both indoors and outdoors. The outdoor work takes place on asphalt paved yards that slope toward one or more storm drains and the waters of the Sacramento River and Snodgrass Slough. Both the storm drains and the navigable waters of the Sacramento River and Snodgrass Slough are in close proximity to the respective Ament Marine Service sites. Because the properties on which the two Ament Marine Service sites are located is subject to rain events, a range of pollutants including, but not limited to, petroleum hydrocarbons, sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, heavy metals (including copper and zinc), soaps, sediment, biodegradable organic matter, sanitary waste, bacteria, and organics from the vessel repair and maintenance activities can discharge to the Sacramento River and Snodgrass Slough. Eyewitness observations identify oil stains on the outdoor pavements, as well as exposed parts and equipment.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch does not reveal Ament Marine Service having obtained any required permit coverage under the CWA for either facility.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is Ament Marine Service, referred to herein as the Discharger, including those of its owners, operators and employees responsible for compliance with the CWA.

4. *The location of the alleged violation.*

The locations of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA are the permanent addresses of the facilities at 16040 Harbor Drive, Isleton, California 95641, and 14567 Walnut Grove-Thornton Road, Walnut Grove, California 95690, and include the adjoining navigable waters of the Sacramento River and Snodgrass Slough, respectively - both waters of the United States. (See attached maps.)

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from May 30, 2008 to May 30, 2013. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street., #817, Sebastopol, CA 95472 – a non-profit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

David Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415 460-9760
Fax. 415 460-9762
Email: lhm28843@sbcglobal.net

STATUTORY BACKGROUND

CWA §301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA §402(p), 33 U.S.C. §1342. CWA §402(p), 33 U.S.C. §1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA §402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA §402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States. Discharge Prohibition A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility, and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Section A(2)]. BMPs must implement BAT and BCT [Section B(3)].
- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Section A(4)]; a list of significant materials handled and stored at the site [Section A(5)]; and, a description of potential pollutant sources including industrial processes, material

handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Section A(6)].

- Include an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective [Section A(7), (8)].
- Be periodically evaluated to ensure effectiveness and must be revised where necessary [Section A(9),(10)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report. Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Section B(7).

Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1st of each year to the executive officer of the relevant Regional Water Quality Control Board. Section A(9)(d) of the General Permit requires the discharger to include in the annual report an evaluation of the discharger's storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). CTR limitations are also applicable to all non storm water and storm water discharges. (40 C.F.R. part 131).

The Central Valley Regional Water Quality Control Board (5S) has established water quality standards for the Sacramento and San Joaquin River basins. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations

that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

VIOLATIONS

River Watch contends that between May 30, 2008 and May 30, 2013 the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by reason of discharging pollutants from the Ament Marine Service sites in Isleton and Walnut Grove to waters of the United States without an individual NPDES permit, without compliance with the General Permit, or in violation of the General Permit.

The violations discussed herein, impacting the Sacramento River and Snodgrass Slough, are derived from eye witness reports and records publicly available, or from records in the possession and control of the Discharger. Furthermore, River Watch contends these violations are continuing. Halting the discharge of pollutants to these important regional waterways is critical if they are to sustain both maritime and natural habitats for bird, animal, and plant life.

Finally, River Watch also believes that neither of the Ament Marine Service sites are properly bermed or operated to ensure that storm water and non-storm water discharges are properly contained, controlled, and/or monitored.

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding both Ament Marine Service facilities:

1. Prohibition of the discharge of pollutants including, but not limited to petroleum hydrocarbons, sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, heavy metals (including copper and zinc), soaps, sediment, biodegradable organic matter, sanitary waste, bacteria, and organics, from vessel repair and maintenance activities and operations.
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's "Industrial Stormwater Fact Sheet Series, Sector R: Ship and Boat Building or Repair Yards" (EPA Office of Water, EPA-833-F-06-033, December 2006; (www.epa.gov/npdes/pubs/sector_r_shipbuilding.pdf)).
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.
4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first

significant rain after April 1; and the second significant rain after April 1.

5. 100% of the discharge from both Ament Marine Service sites must be discharged through discrete conveyances.
6. Any discharge from the Ament Marine Service sites to waters of the United States must be sampled during the four (4) sampling events identified in paragraph #4 above.
7. Preparation and submittal to the Regional Water Quality Control Board of a "Reasonable Potential Analysis" for the two Ament Marine Service sites and their operations.
8. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

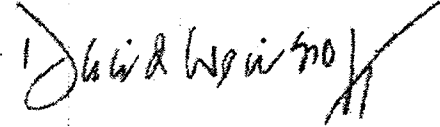
CONCLUSION

CWA §§505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§1319(d), 1365. *See also* 40 C.F.R. §§19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. Members of River Watch use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA §505(a) against the Discharger for the violations of the CWA identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



David Weinsoff

DW:lhlm

Attachment A - Maps

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

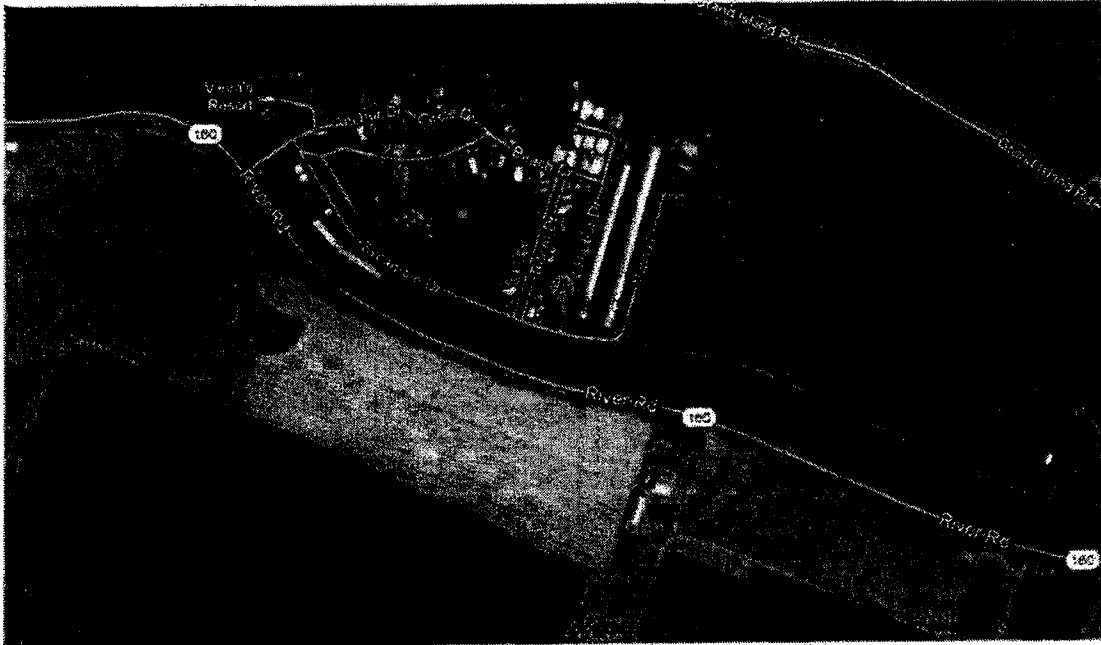
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Executive Officer
Regional Water Quality Control Board
Central Valley Region
Sacramento Office
11020 Sun Center Dr. / Suite 200
Rancho Cordova, CA 95670-6114

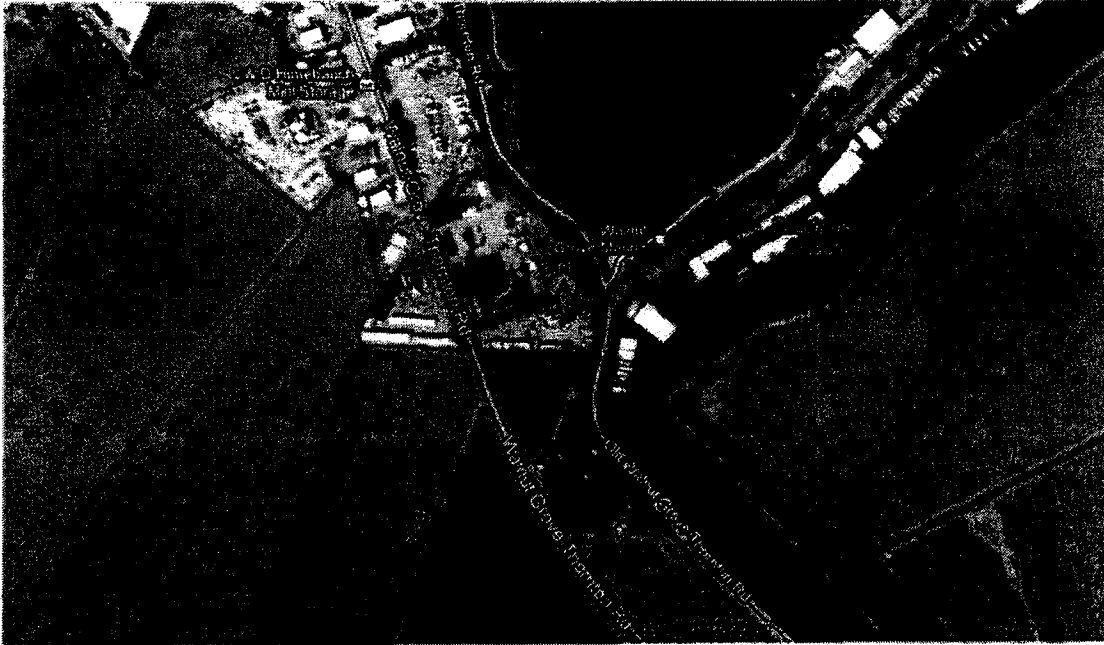
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Google

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9 Attorneys for Plaintiff
CALIFORNIA RIVER WATCH
10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a
501(c)(3), nonprofit, public benefit
14 Corporation,

15 Plaintiff,
16 v.

17 AMENT MARINE SERVICE and
DOES 1 - 10, Inclusive,

18 Defendants.
19 _____/

CASE NO.: 3:13-cv-04056 MEJ

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

20
21
22
23
24
25
26
27
28 //

1 CERTIFICATE OF SERVICE

2 I am employed in the County of Sonoma, State of California. I am over the age of
3 eighteen years and not a party to the within action. My business address is P.O. Box 14426,
4 Santa Rosa, CA 95402. On the date set forth below, I served the following described
5 document(s):

6 **COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL
7 PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean
8 Water Act 33 U.S.C. § 1251, et seq)**

9 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

10 Citizen Suit Coordinator
11 U.S. Dept. of Justice
12 Environmental & Natural Resource Division
13 Law and Policy Section
14 P.O. Box 7415
15 Ben Franklin Station
16 Washington, DC 20044-7415

17 Administrator
18 U.S. Environmental Protection Agency
19 Ariel Rios Building
20 1200 Pennsylvania Avenue, N.W.
21 Washington, D.C. 20460

22 ☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class
23 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.
24 I am readily familiar with the practices of Law Office of Jack Silver for processing of
25 correspondence; said practice being that in the ordinary course of business, correspondence is
26 deposited with the United States Postal Service the same day as it is placed for processing.

27 ☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile
28 machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

29 I declare under penalty of perjury, under the laws of the State of California, that the
30 foregoing is true and correct, and that this declaration was executed on September 3, 2013 at
31 Santa Rosa, California.

32 Wojciech P. Makowski
33 Wojciech P. Makowski

Santa Rosa, CA 95402-7415



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Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
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Ben Franklin Station
Washington, DC 20044-7415